

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-210522**DATE:** December 15, 1983**MATTER OF:** Dr. M. E. Kaye - Reimbursement of
Registration Fee and Per Diem Expenses**DIGEST:**

1. Claim by medical doctor employed by EPA for reimbursement of registration fee and per diem expenses incurred incident to his attendance at Nevada Academy of Family Physician's meeting is governed by the prohibition of 5 U.S.C. § 5946 against such payment and may not be allowed absent evidence that his attendance was part of an authorized training program under 5 U.S.C. § 4109, or that it was related to agency functions or management under 5 U.S.C. § 4110. In the absence of such evidence annual leave should be charged since the employee's travel cannot be considered official travel.
2. Employee contends that he should be reimbursed for expenses incurred incident to attendance at the Nevada Academy of Family Physician's meeting because it provided him with 20 hours of continuing medical education he needs to retain his medical license and board certification, which he in turn needs to retain his EPA position. The claim is denied since the expenses are personal in nature, and within the purview of those cases where we have held that it is the duty of an employee to qualify himself for the performance of his official duties.

Mr. John J. Sandy, Acting Director, Financial Management Division, Environmental Protection Agency (EPA), has referred the claim of Dr. M. E. Kaye to us for decision. At issue is Dr. Kaye's entitlement to reimbursement of a registration fee and per diem expenses he incurred in connection with his attendance at the annual

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meeting of the Nevada Academy of Family Physicians. Also at issue is whether Dr. Kay should have been charged annual leave.

BACKGROUND

Dr. Kaye, whose permanent duty station is Las Vegas, Nevada, attended the Nevada Academy of Family Physician's 14th Annual Ski-CME Meeting from January 24, 1982, to January 29, 1982, in Lake Tahoe, Nevada. He did so pursuant to a travel authorization granting him per diem. Upon his return Dr. Kaye submitted a voucher for reimbursement of \$657.50, of which \$370 was disallowed. Of this amount, \$325 represented the registration fee and \$45 represented a portion of the per diem claimed.

The Las Vegas Finance Office disallowed Dr. Kaye's claim for reimbursement of the registration fee because it included social activities and meals for Dr. Kaye and his wife that could not be separated out or priced on an item-by-item basis. The \$45 was deducted from Dr. Kaye's claim due to a reduction in his per diem entitlement from 7-1/2 to 5-3/4 days, based on a disallowance of the excess time he spent driving instead of flying.

Dr. Kaye contends that he is entitled to reimbursement of the registration fee because the specific purpose for his attendance at the meeting was to earn a portion of the continuing medical education hours he needs to retain his medical license and board certification, and to maintain his position with EPA as a medical advisor. Although Dr. Kaye has concurred in the reduction of his per diem claim, Mr. Sandy has asked whether all of the per diem should have been disallowed in light of the purpose for which Dr. Kaye attended the meeting. For reasons we will explain below it appears that EPA's disallowance of the registration fee was proper and that per diem should not have been authorized.

OPINION

ATTENDANCE AT MEETINGS

The general rule regarding expenses of this nature is found in section 5946 of Title 5, United States Code, which provides that:

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"Except as authorized by a specific appropriation, by express terms in a general appropriation, or by sections 4109 and 4110 of this title, appropriated funds may not be used for payment of--

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"(2) expenses of attendance of an individual at meetings or conventions of members of a society or association."

Section 4109 of Title 5 authorizes the head of an agency to reimburse the necessary expenses of an employee selected for training pursuant to an authorized training program, but there is no indication that Dr. Kaye's attendance at the meeting of the Nevada Academy of Family Physicians was pursuant to an authorized training program. Nor are we aware of any appropriation which provides for reimbursement of these expenses. Therefore, in order for Dr. Kaye to be reimbursed, his attendance must be determined to fall within the exception to the general rule against such reimbursement found in section 4110.

Section 4110 provides that:

"Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities."

In his letter forwarding Dr. Kaye's claim, Mr. Sandy does not assert that the meeting Dr. Kaye attended had any application to EPA's functions or activities, nor does he assert that Dr. Kaye's attendance resulted in the improved conduct, supervision, or management of EPA's functions or activities.

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It does not appear that EPA made a determination that the meeting of the Nevada Academy of Family Physicians was related to agency functions or management as required under 5 U.S.C. § 4110, prior to authorizing Dr. Kaye's travel. Since we have no information regarding Dr. Kaye's duties at EPA, we cannot make an independent determination that the meeting he attended was related to EPA's functions or management.

As a result, in the absence of any indication that one of the exceptions to 5 U.S.C. § 5946 applies, the prohibition of that section against reimbursement of an individual's attendance at meetings of a society or association governs this situation and precludes reimbursement to Dr. Kaye of the registration fee and per diem expenses.

OFFICIAL TRAVEL/ANNUAL LEAVE

Prior to denying Dr. Kaye's claim for reimbursement of the registration fee, the EPA Las Vegas Office contacted the Fiscal Policies and Procedures Branch in Washington for advice. In addition to advising the Las Vegas Office that the registration fee was not reimbursable, the Fiscal Policies and Procedures Branch stated:

"It is our belief that the 14th Annual Ski-CME Meeting was not for the benefit of the Agency and we must hold, under current findings, that the fee is not reimbursable. * * *

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"We also have to question the legality or need for an EPA employee to attend this meeting on official business and believe it should have been at personal expense and a charge to their annual leave."

If no determination is made that Dr. Kaye's attendance at this meeting falls within the confines of 5 U.S.C.

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§ 4110, we would agree with the EPA Fiscal Policies and Procedures Branch that Dr. Kaye's travel cannot be considered official travel and he should be charged annual leave.

STATE LICENSE/BOARD CERTIFICATION

Dr. Kaye contends that he should be reimbursed for the registration fee because to retain his position at EPA he needs a state license and board certification and to retain those, he needs a certain number of continuing medical education hours, 20 of which he earned by attending the Nevada Academy of Family Physicians meeting. Assuming that Dr. Kaye does need a state license and board certification to retain his position at EPA, his claim falls within the purview of those cases in which we have held that it is the duty of an officer or employee of the United States to qualify himself for the performance of his official duties.

In accordance with this rule, we have held that appropriated funds cannot be used to pay the expenses of a Federal attorney incident to maintaining his status as an attorney in good standing in a state bar. See 51-Comp. Gen. 701 (1972); B-204215, December 28, 1981. We have also held that this prohibition extends to preclude the reimbursement of fees required to practice before a particular court. See 47 Comp. Gen. 116 (1967). While all Federal attorneys are required to maintain membership in a state bar and many must be admitted to practice before a particular court in order to represent the Government's interest before that court, we consider these expenses to be matters of personal qualification. In B-204021, April 16, 1982, 61 Comp. Gen. 357, we held that the Merit Systems Protection Board could not reimburse appeals officers for law school tuition and bar review course tuition incident to a program to assist them in meeting a new requirement that they be bar-admitted attorneys. We pointed out, as we had with regard to court admission fees and bar membership fees, that those expenses which enable or assist the individual to qualify for a position are personal to the employee and appropriated funds cannot be used to pay for them.

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We have applied the same rule where a Federal employee must secure a permit or license to perform the duties of his position. Thus, in B-186512, January 17, 1977, we held that appropriations of the U.S. Forest Service were not available to reimburse an employee who was required to purchase a state pesticide applicator license, and in B-193862, April 30, 1979, we held that the National Park Service could not reimburse its employees for the cost of state certification as water treatment operators. In 46 Comp. Gen. 695 (1967), we held that the State license fees imposed on medical doctors employed by the Public Health Service, who are detailed to States or local health agencies, could not be reimbursed to those employees even though they were detailed to carry out State functions.

In summary, without evidence that this situation falls within an exception to the prohibition of 5 U.S.C. § 5946 and given its similarity to the cases cited above, we hold that Dr. Kaye may not be reimbursed for the expenses he incurred incident to attending the Nevada Academy of Family Physician's meeting and that his travel-time is chargeable to annual leave.

for Milton J. Fowler
Comptroller General
of the United States